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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,248	06/25/2003	Jack S. Austin	AUSIPA103	4925
7590 05/05/2004				
ROBERT M. DOWNEY, P.A. 601 SOUTH FEDERAL HIGHWAY SUITE 300 BOCA RATON, FL 33432			EXAMINER LEV, BRUCE ALLEN	
			ART UNIT 3634	PAPER NUMBER

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/607,248

Applicant(s)

AUSTIN ET AL.

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-8 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV  
PRIMARY EXAMINER

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Wells, Jr. 3,245,495.***

As concerns claim 1, ***Wells, Jr. sets forth*** a scaffold apparatus comprising a frame unit including a base frame and an upper frame removably attached to the base frame; said base frame including a horizontal member 11; a plurality of leg members extending downwardly and outwardly from the horizontal member, each leg including an upper fixed section 13 and a lower extendible section 10 that is adjustable; the upper frame member including a vertical post attached to the base frame; a first brace arm 12 (vertically) movably received on the vertical post and extending perpendicular thereto; and a second brace arm (inclusive of member 25) movably received on the vertical post and including a horizontal portion extending perpendicular to the vertical post above and opposite to the first brace arm.

As concerns claim 4, ***Wells, Jr. sets forth*** the first brace arm including a tubular collar 14 for sliding receipt about the vertical post.

As concerns claim 5, Wells, Jr. sets forth the second brace arm including a vertical extension 27 with a lower end zone.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Huber 2,820,678 in view of Piltingsrud 3,071, 204.***

As concerns claim 1, ***Huber sets forth*** a scaffold apparatus comprising a frame unit including a base frame and an upper frame removably attached to the base frame; said base frame including a horizontal member 13; a plurality of leg members 14 extending downwardly and outwardly from the horizontal member; the upper frame member including a vertical post 23 attached to the base frame; a first brace arm 20 (vertically) movably received on the vertical post and extending perpendicular thereto; and a second brace arm 28 movably received on the vertical post and including a horizontal portion extending perpendicular to the vertical post above and opposite to the first brace arm. ***What Huber does not set forth*** is each leg including an upper fixed section and a lower extendible section that is adjustable. However, ***Piltingsrud teaches*** a scaffold apparatus incorporating legs that have an upper fixed section and a lower extendible section that is adjustable. Therefore, it would have been obvious to

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one of ordinary skill in the art at the time the invention was made to modify the legs of Huber by forming them as having an upper fixed section and a lower extendible section that is adjustable, as taught by Piltingsrud, in order to adjust the length of the legs and thereby the height of the horizontal frame member.

As concerns claim 2, Huber sets forth a second pair of legs extending downwardly and outwardly from the horizontal member defining a sawhorse member.

As concerns claim 3, Huber sets forth the scaffold apparatus, as advanced above, except for the pivoting feet. However, ***Piltingsrud teaches*** a scaffold apparatus incorporating legs that have pivoting feet 23. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the legs of Huber by forming them as having pivoting feet at their respective ends, as taught by Piltingsrud, in order to provide means to accommodate un-level surfaces.

As concerns claim 4, Huber sets forth the first brace arm including a tubular collar 21 for sliding receipt about the vertical post.

As concerns claim 5, Huber sets forth the second brace arm including a vertical extension (viewed as an upper section of member 21) with a lower end zone.

### ***Allowable Subject Matter***

Claims 6-8 are allowable over the prior art of record

An examiner's statement of reasons for allowance:

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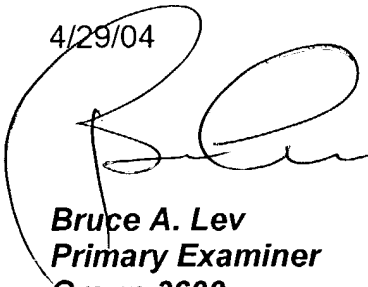
Structural limitations pertaining to the **socket** *fixed to the side of the tubular collar* on said first brace arm and being *structured for the receipt of the lower end zone of the vertical extension* of the second brace arm, along with the other structural limitations are neither taught nor suggested by the prior art of record.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

4/29/04



**Bruce A. Lev**  
**Primary Examiner**  
**Group 3600**